

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ETIENNE L CHOQUETTE,

Plaintiff,

v.

BERNARD E WARNER et al.,

Defendants.

CASE NO. 3:15-CV-05838-BHS-JRC

REPORT AND RECOMMENDATION

NOTED FOR: DECEMBER 2, 2016

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and Magistrate Judge Rules MJR3 and MJR4.

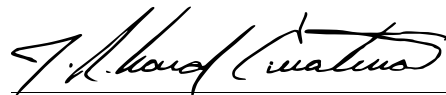
Defendants filed the pending motion to dismiss on June 27, 2016. Dkt. 40. After the motion to dismiss was filed, counsel entered an appearances on behalf of plaintiff, Dkt. 46, and responded to defendants' motion to dismiss, Dkt. 53 (response), 56 (surreply). In his response, plaintiff sought leave to amend his complaint, given the procedural posture of this case. Dkt. 53. In a separate order, the Court directed plaintiff to file a motion to amend his complaint by November 4, 2016. Dkt. 57. On October 20, 2016, plaintiff, through counsel, filed a motion to

1 amend his complaint. Dkt. 58. With no opposition from defendants, Dkt. 59, the Court granted
2 the motion, Dkt. 60.

3 An amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*, 963 F.2d
4 1258, 1262 (9th Cir. 1992). The original complaint is “treated thereafter as non-existent.” *Loux v.*
5 *Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) *overruled on other grounds by Lacey v. Maricopa County*,
6 693 F.3d 896 (9th Cir. 2012). Defendants’ motion to dismiss attacks the second amended
7 complaint (Dkt. 14), which is “non-existent” because plaintiff filed a third amended complaint
8 (Dkt. 61). Accordingly, the undersigned recommends that defendants’ motion to dismiss (Dkt.
9 40) be denied as moot.

10 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
11 Procedure, the parties shall have fourteen (14) days from service of this Report to file written
12 objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
13 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time
14 limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on
15 **December 2, 2016** as noted in the caption.

16 Dated this 10th day of November, 2016.

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18 J. Richard Creatura
19 United States Magistrate Judge
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